

Assurances

1. Respondent certifies that it is a legal entity eligible to do business in the State of Texas.
2. The Respondent certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the Respondent to suspension of payments, termination of Contract, and debarment and suspension actions.
3. The Respondent warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant the City shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
4. Respondent assures that, upon receipt of a contract, it will comply with the following special provisions:
 - (a) Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.
 - (b) During the term of the Contract, if Respondent files and/or pursues an adversarial proceeding against the City then, at the City's option, this Contract and all access to the funding provided for hereunder may terminate if Respondent is in violation of 4(a).
 - (c) Respondent, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.
 - (d) For purposes of this Article, "adversarial proceedings" include any cause of action filed by the Respondent in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.
5. Respondent assures that it will not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, Respondent, if awarded a Contract, agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Respondent certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
 - a. Titles VI and VII of the Civil Rights Act of 1964, as amended;

- b. Section 504 of the Rehabilitation Act of 1973, as amended;
- c. The Age Discrimination Act of 1975, as amended;
- d. Title IX of the Education Amendments of 1972, as amended; and
- e. All applicable regulations implementing those laws.

If receiving Workforce Investment Act of 1998 (WIA) Funds, the Respondent also assures that it will comply with 29 CFR Part 37 and all other regulations implementing the laws listed a above. This assurance applies to the Respondent's operation of the WIA Title I financially assisted program or activity and to all agreements the Respondent makes to carry out the WIA Title I financially assisted program or activity. The Respondent understands that the United States has the right to seek judicial enforcement of this assurance.

6. The Respondent certifies that neither it nor its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- (2) Have not within a three-year period preceding this application submission been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with the commission of any of the offenses enumerated in Paragraph (2) of this certification; and,
- (4) Have not within a three-year period preceding this application submission had one or more public transactions terminated for cause or default.

Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective recipient shall attach an explanation to their application.

- 7. Respondent warrants and certifies that Respondent and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.
- 8. This certification is required by the Federal Regulations implementing Section 1352 of the Program Fraud and Civil Remedies Act, Title 31, U.S. Code, for the Department of Agriculture (7 CFR Part 3018), Department of Labor (29 CFR Part 93), Department of Education (34 CFR Part 82), Department of Health and Human Services (45 CFR Part 93).

The Respondent certifies that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant award, grant, loan, or cooperative agreement.
 - (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant award, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
 - (c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards, at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
9. The Respondent executing this document certifies that the following indicated statement is true and correct and that the Respondent understands that making a false statement is a material breach of the contract and is grounds for contract cancellation and/or removal from Consultant list. Please Initial the applicable statement.

☐ Not applicable. Contractor is not a corporation.

Indicate the certification that applies to your corporation:

☐ The corporation is a for-profit corporation and certified that it is not delinquent in its franchise tax payments to the State of Texas.

☐ The corporation is a non-profit corporation or is otherwise not subject to payment of franchise taxes to the State of Texas.

10. The undersigned Respondent certifies that it complies with The Charter of the City of San Antonio Section 10 Prohibited Interests in Contracts as follows:

- (a) **Charter Provision.** The Charter of the City of San Antonio, in Section 141, states “No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies, or service, except on behalf of the City as an officer or employee. Any willful violation of this Section shall constitute malfeasance in office, and any officer or employee guilty thereof shall

thereby forfeit his office or position. Any violation of this Section, with the knowledge, expressed or implied, of the person or corporation contracting with the Council shall render the contract involved voidable by the City Manager or the Council.”

- (b) **Financial Interest.** An officer or employee has a prohibited “financial interest” in a contract with the city, or in the sale to the city of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:
- (1) the officer or employee;
 - (2) his or her parent, child, or spouse;
 - (3) a business entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly owns:
 - (A) ten (10) percent or more of the voting stock or shares of the business entity, or
 - (B) ten (10) percent or more of the fair market value of the business entity; or
 - (4) a business entity of which any individual or entity listed in Subsection (1), (2) or (3) is:
 - (A) a subcontractor on a city contract;
 - (B) a partner; or
 - (C) a parent or subsidiary business entity.
- (c) **Definitions.** For purposes of enforcing Section 141 of the City Charter under the provisions of this Section:
- (1) a city “employee” is any employee of the city who is required to file a financial disclosure statement pursuant to Section 1(a) of Part G (Financial Disclosure Report).
 - (2) a city “officer” is:
 - (A) the Mayor or any Council member;
 - (B) a Municipal Court Judge or Magistrate; or
 - (C) a member of any board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the city.

Respondent warrants and certifies that it has disclosed within the application, any interest, fact or circumstances which does or may present a potential conflict of interest. (Reference: Discretionary Contracts Disclosure – Attachment E)

11. INSURANCE

Consultant agrees to comply with the following insurance provisions:

- (a) No later than thirty (30) days from the date of execution of this agreement, Consultant shall furnish an original completed Certificate(s) of Insurance to the City’s Community Initiatives Department and City Clerk’s Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed

directly from the agent to the to the City. The City shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to the City's Community Initiatives Department and the City Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement. If the City in its sole discretion determines that Consultant is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit. In such an event, Consultant shall pay for such audit.

- (b) The City reserves the right to review the insurance requirements of this section during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the City allow modification whereupon the City may incur increased risk.
- (c) A Consultant's financial integrity is of interest to the City, therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation* Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (public)	Liability Insurance to include coverage for the following:
a. Premises/Operations	
b. Independent contractors	For <u>Bodily Injury</u> and
c. Broad Form Contractual Liability	and <u>Property Damage</u> of
a. Products/completed operations	\$1,000,000 per
b. Broad Form Property Damage,	occurrence
To include fire legal liability*	\$2,000,000 general
c. Personal Injury	aggregate or its equivalent
d. Explosion, collapse, underground	in umbrella or excess
And property damage Personal Injury*	liability coverage
3. Business Automobile Liability*	
a. Owned/leased vehicles	<u>Combined Single Limit</u> for
<u>Bodily</u>	
b. Non-owned vehicles	<u>Injury and Property Damage</u> of
c. Hired vehicles	\$1,000,000 per occurrence.

4. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
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*if applicable

- i. Worker's Compensation is not required for sole proprietorships, professional corporations and partnerships that employ only one individual to work under this contract. It is generally unnecessary for small businesses (15 or less employees) or contracts where the contractor's employees never enter City premises.
 - ii. Business Auto is not required if the company/corporation has no vehicles registered in the company name or if the consultant never plans to drive to or in the City on City business.
 - iii. Professional Liability is required only when the consultant makes recommendations to change or directs City policy.
- (d) The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the CITY, the Consultant shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.
- (e) Consultant agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
- Name the City and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
 - The Consultant's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under the contract with the City of San Antonio; and
 - Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.
- (f) Consultant shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

**City of San Antonio
Community Initiatives Dept.
P.O. Box 839966
San Antonio, TX 78283-3966**

**City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, TX 78283-3966**

- (g) If Consultant fails to maintain the aforementioned insurance, or fails to secure maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the CITY is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Consultant to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due, to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this agreement.

- (h) It is expressly understood and agreed to by Consultant that additional insurance (e.g. professional liability, motor truck cargo insurance, payment and performance bonds, builders risk, pollution, a fuel storage tank, environmental, commercial crime/fidelity bond, or other insurance as required by the City's Risk Manager) may have to be purchased by the Consultant if the City determines at the time of contract execution that such insurance is applicable.

12. For the purposes of this section on Indemnity, the Respondent is referred to as "Consultant."

CONSULTANT covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT's activities under this CONTRACT, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES,

EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONSULTANT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. CONSULTANT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of contractor's activities under this contract.

13. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
14. If selected, Respondent agrees to abide by the following regarding intellectual property rights:

Respondent shall pay all royalties and licensing fees. Respondent shall hold the City

harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Respondent has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Respondent will immediately:

(a) Either:

- ii) obtain, at Respondent 's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- iii) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- iv) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

(b) Respondent further agrees to:

- i) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
- ii) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
- iii) indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

- Respondent is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Respondent agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,
- that the Software or the equipment is used by the City in the form, state, or condition as delivered by Respondent or as modified without the permission of Respondent, so long as such modification is not the source of the infringement claim,
- that the liability claimed shall not have arisen out of the City's negligent act or omission, and
- that the City promptly provide Respondent with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that

Respondent assumes responsibility under this section.

15. If selected and receiving CSBG funds, Respondent will adhere to all the requirements of the Results Oriented Management and Accountability (ROMA); a system designed to measure results consistently throughout the Contractors service delivery system, as mandated by TDHCA in CSBG Policy Insurance 98.12.8.
16. Respondent certifies that if awarded a contract in response to this RFQ, Respondent will be able and willing to execute a contract in substantially the form shown in the RFQ.
17. The signer of this assurance statement for Respondent represents, warrants, assures and guarantees that he or she has full legal authority to submit qualifications, quotes, or proposals on behalf of Respondent, and to bind Respondent to all of the terms, conditions, provisions and obligations herein contained.
18. Respondent agrees that this offer is firm and good through September 30, 2004.

Legal Name of Respondent

Typed/Printed Name and Title of Authorized Representative

Signature of Authorized Representative

City of San Antonio

Attachment E

Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

*** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of Council action, and no later than five (5) business days after any change about which information is required to be filed.**

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract;

(1) the identity of any **business entity**¹ that would be a party to the discretionary contract: ____ and the name of:

(A) any individual or business entity that would be a *subcontractor* on the discretionary contract;

(A) any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary* business entity, of any individual or business entity who would be a party to the discretionary contract;

(1) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature:	Title: Company:	Date:

²For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

LITIGATION DISCLOSURE

Attachment F

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of Council action, and no later than five (5) business days after any change about which information is required to be filed.

Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Check One

YES ☐

NO ☐

2. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Check One

YES ☐

NO ☐

3. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Check One

YES ☐

NO ☐

If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS TRUE AND CORRECT.

Company Name: _____

Signature of Principal:

Printed Name of Principal:

Title of Principal